BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATES FORMER BENEFIT DECISION NO. 5047 AS A PRECEDENT DECISION PURSUANT TO SECTION 409 OF THE UNEMPLOYMENT INSURANCE CODE.

In the Matter of:

RUSSELL G. MARTINA
(Claimant)
S.S.A. No.

WATERFRONT EMPLOYERS
ASSOCIATION OF CALIFORNIA
(Employer)

PRECEDENT
BENEFIT DECISION
No. P-B-237

FORMERLY
BENEFIT DECISION
No. 5047

The above-named claimant on May 26, 1948, appealed from the decision of a Referee (S-6306) which held that he (1) was available for work within the meaning of Section 57(c) of the Unemployment Insurance Act /now section 1253(c) of the Unemployment Insurance Code/, but (2) had not sought work to the extent required by Section 57(f) of the Act /now section 1253(e) of the code/ during the period from February 13, 1948, to March 30, 1948. The employer on June 2, 1948, also appealed from the decision on the ground that the claimant should be disqualified for benefits under the provisions of Section 58(a)(1) of the statute /now section 1256 of the code/.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant was last employed in California as a longshoreman by the above-mentioned employer on the San Francisco waterfront until the early part of January, 1948, when he left California and moved to North East, Pennsylvania, population 3,500, which is fifteen

miles from Erie, Pennsylvania, population approximately 200,000. The claimant states that the reason he left California was to establish his residence with his parents because he had become separated from his wife and consequently had no one except his mother to care for his two minor children.

On February 13, 1948, the claimant registered for work and filed a claim for benefits against California as the liable state at North East, Pennsylvania. Upon receiving notice that a claim for benefits had been filed, the employer herein protested. On March 26, 1948, the Department issued a determination which held that the claimant was not available for work within the meaning of Section 57(c) of the Unemployment Insurance Act /now section 1253(c) of the code/ indefinitely commencing February 13, 1948. From such determination the claimant appealed. The Referee modified the determination and held the claimant ineligible for benefits under the provisions of Section 57(f) of the Act /now section 1253(e) of the code/ during the period from February 13, 1948, to March 30, 1948. The claimant and the employer both appealed from this decision, the latter contending only that the Referee failed to find that the claimant left his work in California without good cause within the meaning of Section 58(a)(1) of the statute /now section 1256 of the code/.

The claimant has no restrictions or limitations on acceptable employment and the record discloses that there are opportunities for work within his qualifications in the community of his residence. In addition, a representative of the local office testified at a hearing in the matter at Erie on May 7, 1948, that the claimant was considered to be available for work where he was residing. Many persons in the claimant's locality drive to work in the large adjacent labor market in Erie, and although the claimant does not have an automobile, he has a relative in that city with whom he may obtain living accommodations. Prior to March 17, 1948, the claimant made no inquiries for work with local employers but on or about that date he contacted several dock companies in Erie and later a North East contractor. He obtained a position of short duration with the latter employer and thereafter secured other work as a carpenter's helper in North East. He continued to be employed in this position at the time of the hearing on May 7, 1948.

In connection with the claimant's leaving, the employer contends that he was granted a leave of absence for six months in December, 1947, and that he was not "dropped from the registration list of regular longshoremen" until April 13, 1948, when the Port Labor Relations Committee took such action at the claimant's request. The aforesaid committee is the ultimate hiring authority for longshoremen and is in charge of the hiring hall operated jointly by the employer herein and a longshoreman's union of which the claimant was a member. The claimant denies that he had such a leave of absence. He states that he asked for a withdrawal card at his union hiring hall when he left California in January, 1948, and that the union should have properly advised the committee that he was quitting at that time.

REASON FOR DECISION

Under the facts in this case it appears that the Referee's finding that the claimant met the availability requirements of Section 57(c) of the Act /now section 1253(c) of the code/ was a proper one, and the employer does not contend otherwise. We also agree with the Referee that the claimant failed to make a reasonable effort to seek work on his own behalf during a part of the period involved in this appeal. However, the Referee found that he did not make an active search for work as required by Section 57(f) of the Act /now section 1253(e) of the code/ until March 29, 1948, whereas the record discloses that he commenced such an effort on or about March 17, 1948. Accordingly, we hold that the claimant met the requirements of the aforesaid section of the Act on and after March 17, 1948.

There is a conflict in the record relating to the actual date the claimant terminated his employment. However, the claimant's statement that he notified his union that he was quitting in January is persuasive. That he was not "dropped" from the registration polls at that time is understandable considering the manner in which the termination of a longshoreman is effectuated. In any event, his action in filing a claim for benefits the following month clearly establishes that he abandoned any employee-employer relationship which may have continued to exist at that time. In considering the claimant's reason for leaving, we can see no merit to the employer's contention that he did not have a good and compelling reason for quitting. The evidence shows

that the claimant had the sole responsibility of caring for his two small children when he became separated from his wife. Consequently, the need of caring for these minor dependents made it mandatory for him to leave his work, and since the claimant had no one to furnish this care where he was living he found it necessary to return to the home of his parents in Pennsylvania where his mother could assume the responsibility.

Under these circumstances and in accordance with many prior holdings of this Board, we conclude that the claimant had a sufficiently compelling reason for leaving his employment in California to constitute good cause for such voluntary termination within the meaning of Section 58(a)(1) of the Act /now section 1256 of the code/.

DECISION

The decision of the Referee is modified. Benefits are allowed on and after March 17, 1948, provided the claimant is otherwise eligible.

Sacramento, California, September 3, 1948.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

TOLAND C. McGETTIGAN, Chairman

MICHAEL B. KUNZ

GLENN V. WALLS

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5047 is hereby designated as Precedent Decision No. P-B-237.

Sacramento, California, February 17, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT